

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-02

ALEXANDER P. BEBRIS,

Defendant.

**DECLARATION OF RYAN MRAZIK IN SUPPORT OF NON-PARTY
FACEBOOK, INC.'S MOTION TO QUASH DEFENDANT'S RULE 17(a) SUBPOENA**

I, Ryan Mrazik, declare as follows:

1. I am an attorney at Perkins Coie LLP. I am admitted to the Eastern District of Wisconsin and counsel for non-party Facebook, Inc. ("Facebook") in connection with this matter. I make this declaration based on personal knowledge and in support of Facebook's Motion to Quash Defendant's Rule 17(a) Subpoena.

2. Attached as Exhibit A is the Declaration of Michael Francis Xavier Gillin, II, a Facebook employee, which addresses the issues relevant to Defendant's motion to suppress. Facebook provided this declaration to defense counsel and prosecution on November 27, 2019.

3. Attached as Exhibit B is the cover letter and Rule 17(a) subpoena that Defendant Alexander P. Bebris served on Facebook, seeking testimony from a Facebook employee at the hearing on December 3, 2019. The Government was copied on the correspondence.

4. In connection with the subpoena, I contacted defense counsel to offer to provide a sworn declaration regarding issues relevant to Defendant's motion to suppress. In a telephone conference on November 22, 2019, I explained, for example, that the CyberTipline Reports in

this matter indicated on their face that a person reviewed the images before they were reported to NCMEC and that that alone was dispositive: if a person viewed the image, there is no Fourth-Amendment issue under *United States v. Ackerman*, 831 F.3d 1292, 1299 (10th Cir. 2016). I also told defense counsel on that call that Facebook was willing to provide additional sworn testimony and information relevant to Defendant's motion by declaration.

5. Also during my conversation with defense counsel, he stated that he would have preferred live or video testimony but was willing to work with Facebook on a declaration. I asked defense counsel for a list of questions he would like addressed. We also discussed updating the Court before December 3, 2019, that Facebook and the parties were working on a declaration, that a Facebook witness would not be appearing on December 3, 2019, and that the hearing on December 3, 2019, could proceed nevertheless. Later that day, defense counsel sent me 82 questions and sub-questions that he would like to have answered.

6. When I followed up with defense counsel yesterday to confirm that Facebook was working on a declaration and to inquire about the update to the Court, defense counsel no longer agreed to updating the Court and told Facebook to address its concerns to the Court directly.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 27, 2019, at Palo Alto, California

/s/ Ryan T. Mrazik
Ryan T. Mrazik
1201 Third Avenue, Suite 4900
Seattle, WA 98117
Telephone: (206) 359-8098
Fax: (206) 359-9098

CERTIFICATE OF SERVICE

I certify that on November 27, 2019, I electronically filed the foregoing DECLARATION OF RYAN MRAZIK IN SUPPORT OF NON-PARTY FACEBOOK, INC.'S MOTION TO QUASH DEFENDANTS' RULE 17(a) SUBPOENA with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record.

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of November, 2019.

s/ Jean Hernandez

Jean Hernandez, Legal Secretary

EXHIBIT A

Declaration of Michael Francis Xavier Gillin, II

I, Michael Francis Xavier Gillin, II, declare as follows:

1. I am employed by Facebook, Inc. ("Facebook"), headquartered in Menlo Park, California, as a Project Manager for Safety on the Community Operations team. In my role, I am responsible for the enforcement of child safety policies on the platform.
2. The information in this declaration is based on my personal knowledge and information that I have access to in the normal course of my job.
3. Facebook has an independent business purpose in keeping its platform safe and free from harmful content and conduct, including content and conduct that sexually exploits children. As our Community Standards explain, "We do not allow content that sexually exploits or endangers children. When we become aware of apparent child exploitation, we report it to the National Center for Missing and Exploited Children (NCMEC), in compliance with applicable law." Our Community Standards regarding Child Nudity and Sexual Exploitation of Children are publicly available on our website here: https://www.facebook.com/communitystandards/child_nudity_sexual_exploitation.
4. Facebook identifies content and conduct that might violate its Community Standards in various ways. As set out below, CyberTipline Reports 39932621 and 40017882 were based on images Facebook identified using a software called PhotoDNA, which Facebook did not create but instead licensed directly from Microsoft, another private company. Facebook uses PhotoDNA software to identify potential child exploitation content, as well as to identify other types of violations of its Terms of Service or Community Standards. Information about how PhotoDNA works is publicly available, for example, at <https://www.microsoft.com/en-us/photodna>. Facebook did not

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Address: 1 Hacker Way
Menlo Park, CA 94025

license the software from NCMEC or anyone other than Microsoft directly. Facebook does not receive training from NCMEC regarding the use or operation of the PhotoDNA software or its processes for reporting to the CyberTipline.

5. I have reviewed our records regarding CyberTipline Reports 39932621 and 40017882. On September 7, 2018, the Alexander Bebris account (UID 100025567790181) uploaded two images via Facebook Messenger which were initially identified by PhotoDNA, the software described above. These photos were reviewed by a person and reported to NCMEC (CyberTipline Report 39932621). On September 9, 2019, the Alexander Paul account (UID 1648231670) uploaded one image via Facebook Messenger which was identified by PhotoDNA. The photo was reviewed by a person and reported to NCMEC (CyberTipline Report 40017882).

6. Although initially identified by PhotoDNA, a person viewed the images before they were submitted to NCMEC. This is reflected in the CyberTipline Reports themselves where the reports document "Did reporting ESP view the entire contents of uploaded files?" and the report reflects an answer of "Yes." When Facebook responds to this question with an affirmative "Yes," it means that a person viewed the image or file submitted in the CyberTipline report.

7. Facebook has no record of receiving legal process from the Government for the account holders associated with the accounts reported in CyberTipline Reports 39932621 and 40017882. Other than the initial submission of these two CyberTipline Reports, I am not aware of any other communications between Facebook and NCMEC regarding these reports leading up to submission of the two CyberTipline Reports. Similarly, other than its counsel's communications with the Government about the

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defense subpoena, Facebook has identified no records of communications with the Government regarding the images or content of the CyberTipline reports.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on November 27, 2019, at Dublin, Ireland.



Michael Francis Xavier Gillin, II

facebook

Address: 1 Hacker Way
Menlo Park, CA 94025

EXHIBIT B

DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
10/15/19	570 Facebook, Inc. Subpoena - Bebris 2019-137-03	BEBRIS	68.75		68.75

CHECK DATE 10/15/19	CONTROL NUMBER 93219	TOTALS ▶	Gross: 68.75	Ded: 0.00	Net: 68.75
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GIMBEL, REILLY, GUERIN & BROWN LLP
ATTORNEYS AT LAW
TWO PLAZA EAST • SUITE 1170
330 E. KILBOURN AVE
MILWAUKEE, WI 53202

PARK BANK
DOWNTOWN • CAPITOL DRIVE • BROOKFIELD
MILWAUKEE, WISCONSIN 53216

12-66
750

093219

DATE
10/15/19

CHECK
93219

AMOUNT
*****\$68.75

PAY

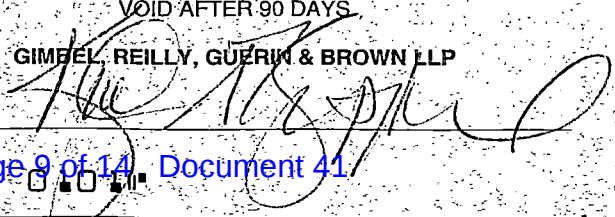
*** SIXTY-EIGHT & 75/100 DOLLARS

TO THE ORDER OF:

Facebook, Inc.
c/o Corporation Services Company
2710 Gateway Oaks Drive Ste 150N
Sacramento CA 95833

VOID AFTER 90 DAYS

GIMBEL, REILLY, GUERIN & BROWN LLP



Case 1:19-cr-00002-WGG Filed 11/27/19 Page 9 of 14 Document 41

Service to: CSC LAWYERS INCORPORATING SERVICE
2710 GATEWAY OAKS DRIVE, SUITE 150N
SACRAMENTO, CA 95833

Party to be Served: FACEBOOK, INC.

Case Number: 19-CR-2

Case Name: UNITED STATES OF AMERICA vs ALEXANDER P.
BEBRIS

Service Date: OCTOBER 17, 2019

IF service documents are rejected return them to: GIMBEL, REILLY, GUERIN, BROWN, LLP
330 EAST KILBOURN AVENUE, MILWAUKEE, WI 53202

SERVED BY: SURE SERVE PROCESS SERVERS
8250 CALVINE ROAD, C331
SACRAMENTO, CA 95828
916-996-4363 | 916-942-9697

Gimbel • Reilly • Guerin • Brown

LLP

Writer's E-mail
jluczak@grgblaw.com

October 14, 2019

Facebook, Inc.
c/o Corporation Services Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Subpoena
United States v. Alexander P. Bebris
Eastern District of Wisconsin Case No. 19-CR-2

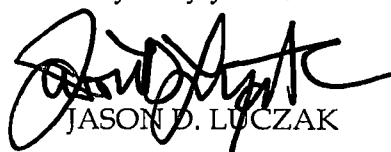
To Whom it May Concern:

I represent the defendant, Alexander P. Bebris, in the referenced matter. You have been served with a subpoena to appear at an evidentiary hearing in a criminal case pending in United States Federal District Court for the Eastern District of Wisconsin (Green Bay). The hearing is scheduled for December 3, 2019. While it is hard to predict what time you will be called as a witness, our best estimate is that you will be called around 11:00 a.m. CST. Additionally, Judge Griesbach has approved your appearance via video-conferencing.

Enclosed is a check for statutory witness fees. The witness fee is reflective of you appearing via video-conferencing within a twenty-five mile radius of your corporate headquarters. In the event you must travel further than twenty-five miles to appear, we will supply you with an additional check for statutory witness fees.

Please give me a call at your earliest convenience so that we can arrange for a time to talk about your testimony and get contact information from you so that we can arrange the necessary video-conferencing, if necessary. My office number is (414) 271-1440 and my cell phone number is (414) 255-4607. You can also reach me via email at jluczak@grgblaw.com. Thank you.

Very truly yours,



JASON D. LUCZAK

330 East Kilbourn Avenue
Suite 1170
Milwaukee, WI 53202
P: 414-271-1440
F: 414-271-7680
www.grgblaw.com

cc: AUSA Dan Humble
Mr. Alexander Bebris
JDL/BJM
crim/bebris/sub/jdl to facebook 2019-10-11

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

United States of America

v.

ALEXANDER P. BEBRIS

Defendant

Case No. 19-CR-2

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: The Person Most Knowledgeable of the Below-Listed Topics

Facebook, Inc.

c/o Corporation Services Company

2710 Gateway Oaks Drive, Suite 150N

Sacramento CA 95833

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance:	United States District Court 125 S. Jefferson Street Green Bay, WI 54301	Courtroom No.: 201
		Date and Time: December 3, 2019 at 11:00 a.m. CST

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

Topics of Knowledge Required:

1. Facebook, Inc.'s use of PhotoDNA software including but not limited to Facebook's agreement to sublicense the software, Facebook's policies and procedures in utilizing the software, information stored by Facebook which was discovered by use of the software, and Facebook's policies and procedures in reporting any content discovered by the software
2. Any ongoing PhotoDNA training offered by Facebook and/or outside entity; and
3. Any cooperation, in writing, verbal, or otherwise, between Facebook, Microsoft, and/or the National Center for Missing & Exploited Children.

Date: August 30, 2019

STEPHEN C. DRIES
CLERK OF COURT

s/ Cheryl A. Veazey
Signature of Deputy Clerk



The name, address, e-mail, and telephone number of the attorney representing (name of party) Alexander P. Bebris, who requests this subpoena, are:

Jason D. Luczak and Brianna J. Meyer
Gimbel, Reilly, Guerin & Brown, LLP
330 E. Kilbourn Ave, Suite 1170
Milwaukee, WI 53202
(414) 271-1440
jluczak@grgblaw.com | bmeyer@grgblaw.com

Case No. _____

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 68.75.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: